

ESTTA Tracking number: **ESTTA517826**

Filing date: **01/24/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Nguyen & Tarbet
Granted to Date of previous extension	01/26/2013
Address	4199 Campus Drive #550 Irvine, CA 92612 UNITED STATES
Correspondence information	Nguyen & Tarbet 4199 Campus Drive #550 Irvine, CA 92612 UNITED STATES quan@ntiplaw.com,judy@ntiplaw.com Phone:949-743-4912

Applicant Information

Application No	85566920	Publication date	11/27/2012
Opposition Filing Date	01/24/2013	Opposition Period Ends	01/26/2013
Applicants	Maximum Impact LLC St 233 3420 Pump Road Henrico, VA 23233 UNITED STATES Thiago Sperotto Ogibowski apt 301 4330 Breeze Bay Circle Henrico, VA 23233 UNITED STATES		


Goods/Services Affected by Opposition

Class 025. All goods and services in the class are opposed, namely: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Martial arts uniforms; Martial arts uniforms, namely, gis; Mixed martial arts suits
Class 028. All goods and services in the class are opposed, namely: Martial arts training equipment; Martial arts training equipment, namely, nunchucks; Sports equipment for boxing and martial arts, namely, boxing gloves, boxing bags, punching mitts, belly protectors, groin protectors and shin guards; Sports equipment for boxing and martial arts, namely, boxing gloves, mixed martial arts gloves, punching mitts, and shin guards; Sports equipment for boxing, martial arts, and the like, namely, an apparatus to support a moving heavy bag; Sports equipment for boxing, martial arts, and the like, namely, protective bras; Training apparatus for boxing, martial arts, and similar sports

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	85783887	Application Date	11/20/2012
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MAXIMUM IMPACT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 044. First use: Physical therapy		

Attachments	85783887#TMSN.jpeg (1 page)(bytes) Notice of Opposition Jan 24, 2013.pdf (14 pages)(3231706 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Quan Nguyen/
Name	Nguyen & Tarbet
Date	01/24/2013

UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Maximum Impact Physical Therapy Services, PLLC,)	
)	
)	
Opposer,)	
)	Application Serial No. 85-566920
v.)	
)	
Maximum Impact, LLC, and)	
Thiago Sperotto Ogibowski)	
Applicant		

NOTICE OF OPPOSITION

Opposer, Maximum Impact Physical Therapy Services, PLLC, an Arizona Corporation (“Opposer”), located and doing business at 6970 N. Oracle Road., Suite 130, Tucson, AZ 85704, believes that it will be harmed by the registration of the mark, “MAXIMUM IMPACT”, shown in Application Serial No. 85-566920, filed March 12, 2012, by Maximum Impact, LLC/Thiago Sperotto Ogibowski (“Applicant”) for goods and services classified in International Class 025 and Class 028 and hereby opposes the same. A description of the Applicant’s application is as follows:

MARK: MAXIMUM IMPACT

SERIAL NO.: 85-566,920

FILED: March 12, 2012

CLASS: 025

GOODS: Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Martial arts uniforms; Martial arts uniforms, namely, gis; Mixed martial arts suits

CLASS: 028

GOODS: Martial arts training equipment; Martial arts training equipment, namely, nunchucks; Sports equipment for boxing and martial arts, namely, boxing gloves, boxing bags, punching mitts, belly protectors, groin protectors and shin guards; Sports equipment for boxing and martial arts, namely, boxing gloves, mixed martial arts gloves, punching mitts, and shin guards; Sports equipment for boxing, martial arts, and the like, namely, an apparatus to support a moving heavy bag; Sports equipment for boxing, martial arts, and the like, namely, protective bras; Training apparatus for boxing, martial arts, and similar sports

As grounds for the opposition, Opposer alleges that:

1. For several years and long prior to the use of Applicant, Opposer has been engaged in the business of rendering physical therapy treatment and consultation in the field of physical therapy and sports, athletic performance under the trademark MAXIUM IMPACT in these fields. (See attached Exhibit A). Opposer has also filed a trademark application for the mark MAXIMUM IMPACT (U.S. Application Serial No. 85/783,887).
2. Opposer is also the owner of and relies on its common law rights in the trademark, MAXIMUM IMPACT. Opposer has continuously used this mark in interstate commerce since at least as early as 2005. Opposer's Limited Liability Company was formed in 2005, and amended to become a Professional Limited Liability Company on March 15, 2007, and has been using this trademark name since its formation (See attached Exhibit B record from the State of Arizona electronic database). The use of this mark has gained a

reputation and recognition among customers as being affiliated with Opposer's Maximum Impact Physical Therapy Services, PLLC.

3. Applicant is a potential competitor of Opposer in that Applicant sells goods in relation to, but not limited to, sports and sport injury prevention. Applicant's goods and services and Opposer's goods and services may be said to travel in precisely the same channels of trade in that Opposer uses electronic-based and website marketing techniques, and that Applicant is expected to use electronic-based and website marketing techniques as well. The goods and services provided are also likely to be evaluated for purchase by the same buying entities in the sports and athletic world.
4. Opposer's primary customers for its MAXIMUM IMPACT services would be indistinguishable from those of the intended customers of Applicant's services and their customer bases potentially overlap.
5. Applicant's adoption of MAXIMUM IMPACT is confusingly similar to Opposer's mark, MAXIMUM IMPACT, and its use by Applicant is likely to create confusion, deception, and mistake. Applicant's use of the mark, MAXIMUM IMPACT, interferes with Opposer's use of the mark, MAXIMUM IMPACT, and will cause injury to Opposer.
6. In view of the similarity of the respective marks and the possibility of competition between Opposer and Applicant to sell related goods and services to the same customers in the same channels of trade, it is alleged that Applicant's mark is confusingly similar to Opposer's pre-existing mark and that Applicant's adoption, use, and registration of the

mark is likely to cause confusion, or to cause mistake, or to deceive potential buyers of Opposer's services.

7. Further, it is alleged that Applicant either knew, or should have known of Opposer's mark prior to adoption of its MAXIMUM IMPACT mark since Opposer's previous website use was a matter of public record, see www.maximumimpactpt.com, Exhibit C. The existence of Opposer's website imposed a duty on Applicant to investigate further into Opposer's potential common law rights in the mark and/or to contact the record owner of that website. If Applicant had performed this due diligence, Applicant would have discovered that the MAXIMUM IMPACT mark was already being used in athletic, sports goods and services.

Wherefore, Opposer requests that Application Serial No. 85-566920 be rejected and stricken, that no registration be issued thereon to Applicant, and that this opposition be sustained with prejudice in favor of Opposer.

Dated: January 24, 2013

Respectfully submitted,



Quan Nguyen
Nguyen & Tabet, LLC

4199 Campus Drive, Suite 550
Irvine, CA 92612
Tel: (949) 725-2204
Fax: (800) 861-3071

Attorneys for Opposer, Maximum Impact Physical
Therapy Services, PLLC

Certificate of Service

The undersigned hereby certifies that the foregoing Notice of Opposition to Serial No. 85-566920, MAXIMUM IMPACT, in Class 025 and 028 was served on Applicant, Maximum Impact/ Thiago Sperotto Ogibowski, by mailing a true copy, by first class mail on January 24, 2013, postage prepaid, to the Applicant at the designated correspondence address of Matthew H. Swyers, Esq., The Trademark Company, 344 Maple Avenue, Suite 151, Vienna, VA 22180.



Quan Nguyen
Nguyen & Tarbet LLC
4199 Campus Drive, Suite 550
Irvine, CA 92612
Tel: (949) 743-4912
Fax: (800) 861-3071

EXHIBIT

A



Our mission is to maximize our clients' potential by providing the care they want, need and deserve in an efficient, responsible and effective manner.

Darren Bayliss P.T.
President/Owner

Owner Profile

- Licensed Physical Therapist
- B.A. Exercise & Sports Science
- Certified Ergonomic Specialist
- Workplace Injury Prevention Consultant
- Former National Bodybuilding Champion
- Former Powerlifting Champion

Member of:

- American Physical Therapy Association (APTA)
- American Academy of Orthopedic Manual Physical Therapists

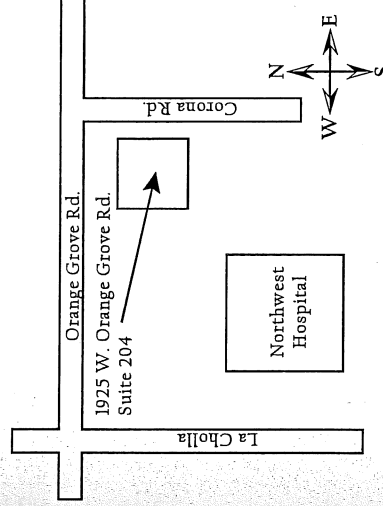
Why Us?

Darren Bayliss P.T. understands your needs because of his personal and professional experience.

- He had major back surgery after many failed attempts with traditional care.
- He has 11 years experience in Occupational Healthcare.
- He was a Former National Bodybuilding & Powerlifting Champion.

In addition, we offer many services to meet your needs.

- No Wait Times
- Same Day Appointments & Walk-Ins Welcome
- Minimum of 45 Minutes of Individualized Care
- Services Based 100% on Client Needs - Avg. 4.5 Visits per Patient with Good Outcomes: National Avg. is 12 Visits
- Exceptional Communication: We will Consult with Patients, Referral Sources, Employers & Payors after every Evaluation, Progress Note & Discharge



Extended Hours Available
7 AM - 7 PM M-F
& Sat. Mornings

Maximize Your Potential



Maximize Results

Reduce Pain

Restore Function

Prevent Re-Injury

1925 W. Orange Grove Rd.
Suite 204

Tucson, AZ 85704

Tel (520) 219-5825

Fax (520) 219-5827

EXHIBIT

B

EXPEDITEDAZ CORPORATION COMMISSION
FILED

MAY 02 2007

ARTICLES OF AMENDMENT
TO THE
ARTICLES OF ORGANIZATION
OF
MAXIMUM IMPACT PHYSICAL THERAPY SERVICES, LLC.

The Articles of Organization of Maximum Impact Physical Therapy Services, LLC., an Arizona limited liability company, are amended as follows:

1. The name of the limited liability company is Maximum Impact Physical Therapy Services, LLC.
2. Attached hereto as Exhibit A is a text of the amendments to the Articles of Organization.

DATED this 15th day of March, 2007.

MAXIMUM IMPACT PHYSICAL
THERAPY SERVICES, LLC., an
Arizona limited liability company

By: 

Darren Bayliss
Member

**PAID**

~~460-~~
43741

EXHIBIT A

STATE OF ARIZONA
ARTICLES OF AMENDMENT
TO THE
ARTICLES OF ORGANIZATION
OF
MAXIMUM IMPACT PHYSICAL THERAPY SERVICES, LLC.,
an Arizona limited liability company

1. Article I is deleted in its entirety and replaced by the following:

"ARTICLE I

NAME: The name of this professional limited liability company shall be Maximum Impact Physical Therapy Services, PLLC."

2. Article III is deleted in its entirety and replaced by the following:

"ARTICLE III

STATUTORY AGENT: The name and business address of the Company's agent for service of process is:

GRB Service, L.L.C., an Arizona
limited liability company
c/o Gabroy, Rollman & Bossé, P.C.
3507 North Campbell Avenue, Suite 111
Tucson, Arizona 85719."

3. Article IV is deleted in its entirety and replaced by the following:

"ARTICLE IV

PROFESSIONAL SERVICES: This professional limited liability company intends to provide professional physical therapy services."

4. Article VI is deleted in its entirety and replaced by the following:

"ARTICLE VI

MANAGEMENT (BY MEMBERS): The management of the business affairs and property of this professional limited liability company shall be reserved to the members, whose numbers shall not less than one and who shall adopt an Operating Agreement containing all of the provisions deemed appropriate and consistent with the laws that govern the conduct of its business affairs, its authorities, rights and powers, and the authorities, duties, rights and powers of its members, officers, employees or agents.

The member(s) may, by lawful consent, appoint one or more members to conduct the business affairs and property of the company and whose authorities, duties, rights and powers shall be authorized pursuant to a duly adopted Operating Agreement.

The name and address of the person who will be the lawful members of this professional limited liability company at the time of this amendment are:

Darren Bayliss
7898 North Coltrane Lane
Tucson, Arizona 85743."

CONSENT TO APPOINTMENT
AS STATUTORY AGENT

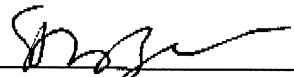
GRB Service, L.L.C., an Arizona limited liability company, having been designated to act as Statutory Agent for Maximum Impact Physical Therapy Services, PLLC., hereby consents to act in that capacity until removed or resignation is submitted in accordance with Arizona Revised Statutes.

GRB SERVICE, L.L.C., an Arizona
limited liability company

By Its Member:

GABROY, ROLLMAN & BOSSÉ, P.C.,
an Arizona professional corporation

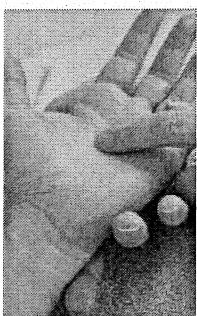
By:



Steven L. Bossé
Treasurer

EXHIBIT

C



ADVANTAGES!

Our Philosophy:

We examine and treat the whole person by focusing on the causes of your pain rather than simply treating the symptoms, so that you have quick and lasting results.

One-on-One Care:

Manual therapy is the cornerstone of our care. We provide "hands-on care" for your specific needs.

Customer Service:

Our focus is exceptional patient satisfaction and superior treatment outcomes. Experience our team of friendly, caring and professional individuals who are dedicated to your success.

Specialty Services:

Back and Neck Program, Certified Hand Therapy, Chronic Pain, Sports Therapy..



Northwest: 6970 N. Oracle Road, Suite 130, Tucson, AZ 85704

Rita Ranch: 8270 S. Houghton Road, Suite 180, Tucson, AZ 85747

Midvale: 1590 W. Commerce Court, Tucson, AZ 85746

Marana: 13395 N. Marana Main St., 2nd Floor, Marana, AZ 85653

Call Now!

Northwest
(520) 219-5825
Rita Ranch
(520) 664-1430
Midvale
(520) 573-1443
Marana
(520) 682-9645

